



KAUFMAN BORGEEST & RYAN LLP

120 BROADWAY, NEW YORK, NY 10271
TEL: 212.980.9600 FAX: 212.980.9291 WWW.KBRLAW.COM

BETSY D. BAYDALA
DIRECT: 212.994.6538
BBAYDALA@KBRLAW.COM

March 25, 2023

VIA ECF FILING ONLY

Hon. Lorna G. Schofield, U.S.D.J.
United States District Court, SDNY
500 Pearl Street
New York, NY 10007

Re: Powers v. Memorial Sloan Kettering Cancer Center, et al.
Docket No. : 1:20-cv-02625

Dear Judge Schofield:

Defendants submit this letter in opposition to Plaintiff's request for Your Honor to reconsider having precluded Plaintiff's expert radiologist, Dr. Coakley, from testifying at trial.

Initially, Plaintiff's recitation of the events during the March 14, 2023 Pretrial Conference is misstated. Your Honor asked defense counsel to expound on their assertion in the Proposed Final Joint Pretrial Order that Dr. Coakley's testimony is cumulative to Plaintiff's experts, Drs. DeMatteo and Navuluri. (Doc. 415, p. 8). Based on argument heard during the Conference, Your Honor decided that Dr. Coakley's testimony is cumulative, and therefore, his testimony was precluded. Plaintiff's arguments for reconsideration are unavailing and reaffirm Defendants' contention that Dr. Coakley's testimony is cumulative to Plaintiff's experts, Drs. DeMatteo and Navuluri.

First, Plaintiff argues that Dr. Coakley's testimony is necessary to rebut the "true ablation zone" size, as well as Dr. Sofocleous' claim that the ablation zone could not be differentiated from the lack of blood flow due to the portal vein thrombosis. However, these issues were explicitly addressed by Dr. Navuluri. Indeed, Dr. Navuluri testified at his deposition as follows:

Q: If there is a thrombosis in the portal vein that causes hypoperfusion of a large area of the liver, would that not be indistinguishable from an ablation zone?

A: No.

Q: It would not be or it would be?

A: It would be absolutely distinguishable from the ablation zone. The portal vein supplies half the liver and you would see an entire lobe that is

Powers v. Memorial, et al.
Page 2 of 2

hypoperfused, whereas an ablation zone is round and spherical and does not conform to a portal distribution.

See Dr. Navuluri's Deposition, T.137:6-20. Dr. Navuluri further testified, "I'm saying that I can distinguish ablation from hypoperfusion." Id., T.139:11-15.

Moreover, Dr. Navuluri testified that he created PowerPoints to explain these issues. His first PowerPoint demonstrated "the perfusion defect versus the ablation zone." Id., T.142:2-143:11 and T.146:11-14. His second PowerPoint demonstrated "the size of the ablation." Id., 143:2-6. Dr. Navuluri testified consistent with his expert report that the ablation zone was 2.6 times larger than necessary. Id., T.134:9-12.

Second, Plaintiff argues that Dr. Coakley is needed to rebut the issue of causation regarding Ms. Zak's hepatic artery to rupture on July 4, 2017. However, nowhere in Dr. Coakley's expert report is the July 4, 2017 bleed and resulting embolization mentioned. See Doc. 438-2. Indeed, Dr. Coakley's expert opinions as stated in his report stop as of June 6, 2017. Id. Accordingly, consistent in the Court's prior decisions, Dr. Coakley should not be permitted to testify on this issue at trial since it is a matter not covered in his expert report.

Defendants maintain that Dr. Coakley's testimony is cumulative and has been properly precluded. Therefore, Defendants respectfully submit that Plaintiff's request for reconsideration of that ruling be denied.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

/s/ Betsy D. Baydala

Betsy D. Baydala

cc: via ECF filing

Hendler Flores Law, PLLC
1301 West 25th Street, Suite 400
Austin, Texas 78705
shendler@hendlerlaw.com
lgoettsche@hendlerlaw.com

Dodd Law Firm, P.C.
3825 Valley Commons Dr., Suite 2
Bozeman, MT 59718
matt@doddlawfirm.com